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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.22620 of 2018

Laurus Labs Limited
(earlier known as Aptuit Laurus Pvt.Ltd)
2nd Floor, Serene Chambers Road #7,
Banjara Hills, Hyderabad - 500 034.
Represented by its Authorized Representative ... Petitioner

Vs.

- 1.Union India,
Represented by its Secretary,
Ministry of Commerce and Industries,
Department of Industrial Policy and Promotion,
Udyog Bhavan,
New Delhi - 110001.
- 2.The Assistant Controller of Patents,
The Patent Office, Intellectual Property Office Building,
G.S.T.Road, Guindy,
Chennai - 600032. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus calling for the records relating to the order of the second respondent viz., Assistant Controller of patents, Chennai dated 21.07.2016 made in INDIAN PATENT APPLICATION NO.2301/CHE/2008 filed by Petitioner, quash the same and issue an appropriate directions to grant an opportunity of hearing to this Petitioner and/or direct the second Respondent to restore Indian Patent Application No. 2301/CHE/2008 for examination on merits.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.P.R.Ramesh Babu,
Senior Standing Counsel

O R D E R

This Writ Petition has been filed for issuance of Writ of Ceritoriarified Mandamus, to call for the records relating to the order of the second respondent viz., Assistant Controller of patents, Chennai, dated 21.07.2016 made in INDIAN PATENT



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APPLICATION NO.2301/CHE/2008 filed by Petitioner, quash the same and issue an appropriate directions to grant an opportunity of hearing to this Petitioner and/or direct the second Respondent to restore Indian Patent Application No.2301/CHE/2008 for examination on merits.

2. It is the case of the petitioner that on 22.09.2008, the petitioner filed a patent application and also submitted Form-18 on 20.10.2009 seeking request for examination. Subsequently, the petitioner underwent a change of name from Aptuit Laurus Pvt.Ltd. and changed it as Laurus Labs Pvt.Ltd. on 21.2.2012 and filed Form-13 on 09.03.2012. The 2nd respondent examined the application and issued first Examination Report on 21.07.2014 with certain objections and the petitioner also filed a detailed response.

3. While so, to the utter shock of the petitioner, its application was refused by 2nd respondent vide impugned order, on the ground that the petitioner neither attended the hearing nor made any submission to the 2nd respondent.

4. The grievance of the petitioner is that that no notice was received by them from the 2nd respondent, before passing the impugned order of abandonment of patent by the 2nd respondent. The notice said to have been served by the 2nd respondent to the petitioner was to the different address i.e., Aptuit Laurus Private Limited, 2nd Floor, Serene Chambers, Road 7, Banjara Hills, Hyderabad - 500 034. However, since the petitioner had not appeared, the impugned order of abandonment of patent was passed on 21.07.2016.

5. According to the petitioner, they have given a Form-13 for name change on 09.03.2012 and in the name change application, he has clearly mentioned the address also. While so, without noticing the said address, the respondent has sent the notice to the old address. Due to which, the petitioner was not able to appear before the Controller to make his presentation. Hence, the petitioner's application for patent was rejected without hearing the petitioner, which is violative of principles of natural justice. Hence, the petitioner is constrained to file the present writ petition.

6. Per contra, the learned counsel for the respondents would submit that in the Form 13 dated 09.03.2013, the petitioner has stated only the change of the name of the Company and not about the address. Further he submitted that the petitioner has not appeared for hearing and therefore, the impugned order was passed. He pointed out that since the petitioner sought for change of name of the company vide Form 13 and not for change of address, thus the letter was sent to the old address of the petitioner.



7. However, a perusal of the letter, it is very clear that the communication was made only to the old company name and not in the name of the new company. It shows that without application of mind, the second respondent sent the communication in the name of old company name and to the old address in spite of the change of name of the company and address sought for by the petitioner by virtue of Form - 13 as early as on 09.03.2012.

8. Under these circumstances, this Court is of the considered opinion that without providing an opportunity and without proper communication, the 2nd respondent has passed the impugned order, which cannot be sustained. In fact, the communication was sent to the old address with the old name of the petitioner, thus the petitioner was unable to appear before the 2nd respondent.

9. In such view of the matter, the impugned order dated 21.07.2016 is quashed and accordingly, the Writ Petition stands allowed. The second respondent is directed to re-consider the petitioner's patent application and pass appropriate orders on merits and in accordance with law after affording an opportunity to the petitioner. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1. The Secretary, Union India,
Ministry of Commerce and Industries,
Department of Industrial Policy and Promotion,
Udyog Bhavan, New Delhi - 110001.
2. The Assistant Controller of Patents,
The Patent Office, Intellectual Property Office Building,
G.S.T. Road, Guindy, Chennai - 600032.

W.P.No.22620 of 2018

MG (CO)
GMY (07/01/2022)